

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 860 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT AMBUJA PROTIN LTD

Versus

DEPUTY SECRETARY

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Appearance:

MR RC JANI for Petitioner

MR GHARANIA, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/09/98

ORAL JUDGEMENT

Heard ld. counsel appearing for the parties.  
Considering the facts and circumstances of the case, petition requires to be admitted. Hence, Rule. Ld. AGP Mr. Gharania waives service of Rule on behalf of the respondents. With the consent of ld. counsel appearing for the parties, this petition is taken up for final hearing today.

Ld. counsel appearing for the petitioner has

taken this court through the entire proceedings which had taken place before the State machinery. Considering the allegations made in the Show Cause Notice ( SCN for

short) issued by the competent authority, explanation tendered by the petitioner company and the findings arrived at by the Collector, mostly there is no substance in the submission of ld. counsel for the petitioner that there was no opportunity given for presenting the case of the petitioner company. However, ld. counsel Mr. Jani appearing for the petitioner has convinced this court that atleast in respect one irregularity, State machinery has not applied its mind and to that extent the order of Collector and the appellate authority requires interference. According to Mr. Jani, irregularity shown at Sr. No.5 in SCN Annex.A pertaining to irregular maintenance of accounts as to 1500 kg. of cotton-seed oil, is not an irregularity atall and the explanation given by the petitioner company ought to have been accepted in toto. Mr. Jani has tried to clarify that this stock was sold to one Shakti Trading Company vide bill No.58 dated 4.4.1995 for Rs. 51,563.00 and the same was transported to the concerned purchaser by a motor truck No. GJ-2T-6210. According to him, said delivery of cotton-seed oil was not accepted by Shakti Trading Company and the whole consignment was lying on the road loaded in the said truck. The same stock was then sold to a new customer vide bill No. 79 dated 7.4.1995 for Rs.55,000/-. According to Shri Jani, both these bills were shown to the Collector and the concerned authority. The alleged breach can be said to be too technical and the same should not be construed as material irregularity or an act with an intention or with malice. The petitioner is a Ltd. Company. It is not the say of the

respondents- State that these two bills are not correct and that the same are found bogus during the cross-checking. According to the competent authority, explanation is not found satisfactory. Ld. counsel appearing for the petitioner Mr. Jani fairly concedes that if the competent authority including the Collector is directed to consider this explanation afresh sympathetically, then he does not press other points which are agitated by the petitioner in this petition. According to Mr. Jani, 20% of the total value of the goods for which irregularities are found, has been confiscated and this 20% hs been calculated in terms of money by the respondents and the petitioner has no grievance as to the amount mentioned in the impugned

order and the value assessed by the concerned officer, if the matter, for the limited purpose is remanded back, 20% of the entire amount would not exceed Rs. 11,000/ approximately.

Considering the transparent dealing of the company and on various occasions working of the company is found satisfactory by the regulating machinery of the State, in my opinion, the company should not be fastened with unreasonable liability. It was open for the respondents- State to cross-check the defence taken by the petitioner. Non-acceptance of logical explanation without assigning convincing reasons can be said to be an error which requires to be rectified. Mr. Jani has rightly submitted that the petitioner has some case so far as above said irregularity is concerned (Irregularity No.5 in SCN ).

Mr. Gharania, ld. AGP appearing for the State submits that if the petitioner is directed to deposit the equivalent amount of the confiscated goods within a reasonable time frame, than the State has no objection in considering the submissions as above of the petitioner denovo without prejudice to the previous finding so far as irregularity no.5 in SCN is concerned. None of the counsel is in a position to state at the Bar positively whether the petitioner has given Bank Guarantee or not for the confiscated goods. Even if the Bank Guarantee is given, the same can be encashed by the petitioner provided that the petitioner pays amount to the State treasury through the concerned DSO or Collector. I agree that the petitioner can retain atleast Rs. 11000/ with him till the hearing and disposal of the dispute pertaining to the above-referred irregularity no.5.

Under the circumstances, this petition requires to be allowed partly. The petitioner is directed to pay to the respondent State a sum of Rs. 1,55,686-40 within a period of four weeks from the date of this order. If petitioner deposits the amount as aforesaid, the respondents-State machinery i.e. Collector and in turn if necessary, the appellate authority, shall consider representation of the petitioner denovo in respect of irregularity no.5 in SCN at Annex.A. Under the circumstances, findings of authorities below as to irregularity no.5 in SCN is hereby quashed and set aside and matter is remanded back to the authorities concerned to hear and give its finding in respect of irregularity no.5 in SCN at Annex.A denovo, afresh and after affording

opportunity of being heard to the petitioner. The

petitioner is at liberty to file such representation before the Collector within a four weeks from the date of deposit of the amount as aforesaid. On representation being made, the respondent- Collector shall consider with all sympathy such representation in accordance with law and without prejudice de novo within a period of eight weeks from the date of receipt of such representation. The petitioner will also be at liberty to address the Collector in person or through lawyer over and above written representation. Except as aforesaid, rest of the orders of the authorities concerned are hereby confirmed. However, it is made clear that the whole exercise should be made only if the petitioner pays aforesaid amount of Rs. 1,55,686-40 within the stipulated time.

Petition is partly allowed. Rule is made absolute to the aforesaid extent only. No costs.

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